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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

## ASSEMBLY BILL

**No. 823**

**Introduced by Assembly Member Papan Gallegos**

February 27, 1997

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~~An act to amend Section 2052 of, and to add Section 2052.2 to, the Business and Professions Code, to add Section 1368.07 to the Health and Safety Code, and to add Section 10140.7 to the Insurance Code, relating to health care. An act to amend Section 14016.5 of the Welfare and Institutions Code, relating to Medi-Cal.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 823, as amended, Papan Gallegos. ~~Health—care~~  
*Medi-Cal: managed care.*

*Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. Under existing law, Medi-Cal services may be provided to a beneficiary or eligible applicant by an individual provider, or*

*through a prepaid managed health care plan, pilot project, or fee-for-service case management provider.*

*Under existing law, each beneficiary or eligible applicant shall be provided with information as to health care options, including certain provider information.*

*Under existing law, an applicant who chooses to enroll in a managed care plan, pilot project, or fee-for-services case management provider to indicate his or her choice of a primary care provider.*

*This bill would revise the existing provisions relating to provider information, including specifying the format in which the information shall be organized. This bill would authorize an applicant who chooses to enroll in a managed care plan, pilot project, or fee-for-services case management provider, to indicate a choice of clinic as well as of a primary care provider.*

~~Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, and makes the practice of medicine, as defined, by any person without a valid physician and surgeon's certificate subject to criminal sanction. Existing law also provides for the licensure and regulation of health care service plans by the Department of Corporations, and of disability insurers by the Department of Insurance.~~

~~This bill would define the practice of medicine to include making a decision regarding the medical necessity or appropriateness of any diagnosis, treatment, operation, or prescription for a particular patient, and would provide that a person who engages in this action is subject to the Medical Practice Act.~~

~~The bill would provide that it shall not limit the practice of other licensed healing arts practitioners nor preclude the independent review of coverage decisions regarding experimental or investigational therapies, as required by existing law. The bill would provide that it shall not apply to automobile and homeowners' insurance claim decisions, nor limit the exercise of prayer or interfere with the practice of religion. The bill would provide that it shall not cause a health care service plan to be defined as a health care provider under~~

~~any provision of law, and that it does not abrogate or limit any theory of liability otherwise available at law.~~

~~By changing the definition of a crime this bill would impose a state mandated local program. The bill would also provide with respect to the laws governing health care service plans and those governing insurers that any person who makes such a decision or recommendation pursuant to an employment or contractual relationship with a plan or insurer is engaging in the practice of medicine and is subject to the requirements of the Medical Practice Act.~~

~~Since a willful violation of this requirement by a health care service plan would be subject to criminal sanction, this bill would impose a state mandated local program by changing the definition of a crime.~~

~~This bill would provide that remedies in these provisions shall not preclude any other remedies at law.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes no.~~

*The people of the State of California do enact as follows:*

1    **SECTION 1.** ~~Section 2052 of the Business and~~  
2    *SECTION 1. Section 14016.5 of the Welfare and*  
3    *Institutions Code is amended to read:*  
4    14016.5. (a) At the time of determining or  
5    redetermining the eligibility of a Medi-Cal or aid to  
6    families with dependent children (AFDC) applicant or  
7    beneficiary who resides in an area served by a managed  
8    health care plan or pilot program in which beneficiaries  
9    may enroll, each applicant or beneficiary shall personally  
10   attend a presentation at which the applicant or  
11   beneficiary is informed of the managed care and  
12   fee-for-service options available regarding methods of

1 receiving Medi-Cal benefits. The county shall ensure that  
2 each beneficiary or applicant attends this presentation.

3 (b) The health care options presentation described in  
4 subdivision (a) shall include all of the following elements:

5 (1) Each beneficiary or eligible applicant shall be  
6 informed that he or she may choose to continue an  
7 established patient-provider relationship in the  
8 fee-for-service sector.

9 (2) Each beneficiary or eligible applicant shall be  
10 provided with the name, address, ~~and~~ telephone number,  
11 *and specialty, if any*, of each primary care provider, ~~by~~  
12 ~~specialty, or~~ *and each* clinic participating in each prepaid  
13 managed health care plan, pilot project, or fee-for-service  
14 case management provider option. *This information shall*  
15 *be provided under geographic area designations, in*  
16 *alphabetical order by the name of the primary care*  
17 *provider and clinic.* The name, address, and telephone  
18 number of each specialist participating in each prepaid  
19 managed care health plan, pilot project, or fee-for-service  
20 case management provider option shall be made  
21 available by either contacting the health care options  
22 contractor or the prepaid managed care health plan, pilot  
23 project, or fee-for-service case management provider.

24 (3) Each beneficiary or eligible applicant shall be  
25 informed that he or she may choose to continue an  
26 established patient-provider relationship in a managed  
27 care option, if his or her treating provider is a primary  
28 care provider *or clinic* contracting with any of the  
29 prepaid managed health care plans, pilot projects, or  
30 fee-for-service case management provider options  
31 available, has available capacity, and agrees to continue  
32 to treat that beneficiary or applicant.

33 (4) In areas specified by the director, each beneficiary  
34 or eligible applicant shall be informed that if he or she fails  
35 to make a choice, or does not certify that he or she has an  
36 established relationship with a primary care provider or  
37 clinic, he or she shall be assigned to, and enrolled in, a  
38 prepaid managed health care plan, pilot projects, or  
39 fee-for-service case management provider.

(c) No later than 30 days following the date a Medi-Cal or AFDC beneficiary or applicant is determined eligible, the beneficiary or applicant shall indicate his or her choice in writing, as a condition of coverage for Medi-Cal benefits, of either of the following health care options:

(1) To obtain benefits by receiving a Medi-Cal card, which may be used to obtain services from individual providers, that the beneficiary would locate, who choose to provide services to Medi-Cal beneficiaries.

The department may require each beneficiary or eligible applicant, as a condition for electing this option, to sign a statement certifying that he or she has an established patient-provider relationship, or in the case of a dependent, the parent or guardian shall make that certification. This certification shall not require the acknowledgment or guarantee of acceptance, by any indicated Medi-Cal provider or health facility, of any beneficiary making a certification under this section.

(2) (A) To obtain benefits by enrolling in a prepaid managed health care plan, pilot program, or fee-for-service case management provider that has agreed to make Medi-Cal services readily available to enrolled Medi-Cal beneficiaries.

(B) At the time the beneficiary or eligible applicant selects a prepaid managed health care plan, pilot project, or fee-for-service case management provider, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider *or clinic* contracting with the selected prepaid managed health care plan, pilot project, or fee-for-service case management provider.

(d) (1) In areas specified by the director, a Medi-Cal or AFDC beneficiary or eligible applicant who does not make a choice, or who does not certify that he or she has an established relationship with a primary care provider *or clinic* shall be assigned to and enrolled in an appropriate Medi-Cal managed care plan, pilot project, or fee-for-service case management provider providing service within the area in which the beneficiary resides.

(2) If it is not possible to enroll the beneficiary under a Medi-Cal managed care plan or pilot project or a fee-for-service case management provider because of a lack of capacity or availability of participating contractors, the beneficiary shall be provided with a Medi-Cal card and informed about fee-for-service primary care providers who do all of the following:

(A) The providers agree to accept Medi-Cal patients.

(B) The providers provide information about the provider's willingness to accept Medi-Cal patients as described in Section 14016.6.

(C) The providers provide services within the area in which the beneficiary resides.

(e) If a beneficiary or eligible applicant does not choose a primary care provider or clinic or does not select any primary care provider who is available, the managed health care plan, pilot project, or fee-for-service case management provider that was selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(f) (1) The managed care plan shall have a valid Medi-Cal contract, adequate capacity, and appropriate staffing to provide health care services to the beneficiary.

(2) The department shall establish standards for all of the following:

(A) The maximum distances a beneficiary is required to travel to obtain primary care services from the managed care plan, fee-for-service managed care provider, or pilot project in which the beneficiary is enrolled.

(B) The conditions under which a primary care service site shall be accessible by public transportation.

(C) The conditions under which a managed care plan, fee-for-service managed care provider, or pilot project shall provide nonmedical transportation to a primary care service site.

(3) In developing the standards required by paragraph (2), the department shall take into account, on

1 a geographic basis, the means of transportation used and  
2 distances typically traveled by Medi-Cal beneficiaries to  
3 obtain fee-for-service primary care services and the  
4 experience of managed care plans in delivering services  
5 to Medi-Cal enrollees. The department shall also consider  
6 the provider's ability to render culturally and  
7 linguistically appropriate services.

8 (g) To the extent possible, the arrangements for  
9 carrying out subdivision (d) shall provide for the  
10 equitable distribution of Medi-Cal beneficiaries among  
11 participating managed care plans, fee-for-service case  
12 management providers, and pilot projects.

13 (h) If, under the provisions of subdivision (d), a  
14 Medi-Cal beneficiary or applicant does not make a choice  
15 or does not certify that he or she has an established  
16 relationship with a primary care provider *or clinic*, the  
17 person may, at the option of the department, be provided  
18 with a Medi-Cal card or be assigned to and enrolled in a  
19 managed care plan providing service within the area in  
20 which the beneficiary resides.

21 (i) Any Medi-Cal or AFDC beneficiary who is  
22 dissatisfied with the provider or managed care plan, pilot  
23 project, or fee-for-service case management provider  
24 shall be allowed to select or be assigned to another  
25 provider or managed care plan, pilot project, or  
26 fee-for-service case management provider.

27 (j) The department or its contractor shall notify a  
28 managed care plan, pilot project, or fee-for-service case  
29 management provider when it has been selected by or  
30 assigned to a beneficiary. The managed care plan, pilot  
31 project, or fee-for-service case management provider  
32 that has been selected by, or assigned to, a beneficiary,  
33 shall notify the primary care provider or clinic than it has  
34 been selected or assigned. The managed care plan, pilot  
35 project, or fee-for-service case management provider  
36 shall also notify the beneficiary of the managed care plan,  
37 pilot project, or fee-for-service case management  
38 provider or clinic selected or assigned.

39 (k) (1) The department shall ensure that Medi-Cal  
40 beneficiaries eligible under Title XVI of the Social

1 Security Act are provided with information about options  
2 available regarding methods of receiving Medi-Cal  
3 benefits as described in subdivision (c).

4 (2) (A) The director may waive the requirements of  
5 subdivisions (c) and (d) until a means is established to  
6 directly provide the presentation described in  
7 subdivision (a) to beneficiaries who are eligible for the  
8 federal Supplemental Security Income for the Aged,  
9 Blind, and Disabled Program (Subchapter 16  
10 (commencing with Section 1381) of Chapter 7 of Title 42  
11 of the United States Code).

12 (B) The director may elect not to apply the  
13 requirements of subdivisions (c) and (d) to beneficiaries  
14 whose eligibility under the Supplemental Security  
15 Income program is established before January 1, 1994.

16 (I) In areas where there is no prepaid managed health  
17 care plan or pilot program which has contracted with the  
18 department to provide services to Medi-Cal beneficiaries,  
19 and where no other enrollment requirements have been  
20 established by the department, no explicit choice need be  
21 made, and the beneficiary or eligible applicant shall  
22 receive a Medi-Cal card.

23 (m) The following definitions contained in this  
24 subdivision shall control the construction of this section,  
25 unless the context requires otherwise:

26 (1) “Applicant,” “beneficiary,” and “eligible  
27 applicant,” in the case of a family group, means any  
28 person with legal authority to make a choice on behalf of  
29 dependent family members.

30 (2) “Fee-for-service case management provider”  
31 means a provider enrolled and certified to participate in  
32 the Medi-Cal fee-for-service case management program  
33 the department may elect to develop in selected areas of  
34 the state with the assistance of and in cooperation with  
35 California physician providers and other interested  
36 provider groups.

37 (3) “Managed health care plan” and “managed care  
38 plan” mean a person or entity operating under a  
39 Medi-Cal contract with the department under this  
40 chapter or Chapter 8 (commencing with Section 14200)



1 to provide, or arrange for, health care services for  
2 Medi-Cal beneficiaries as an alternative to the Medi-Cal  
3 fee-for-service program that has a contractual  
4 responsibility to manage health care provided to  
5 Medi-Cal beneficiaries covered by the contract.

6 (n) (1) Whenever a county welfare department  
7 notifies a public assistance recipient or Medi-Cal  
8 beneficiary that the recipient or beneficiary is losing  
9 Medi-Cal eligibility, the county shall include, in the notice  
10 to the recipient or beneficiary, notification that the loss  
11 of eligibility shall also result in the recipient's or  
12 beneficiary's disenrollment from Medi-Cal managed care  
13 health or dental plans, if enrolled.

14 (2) (A) Whenever the department or the county  
15 welfare department processes a change in a public  
16 assistance recipient's or Medi-Cal beneficiary's residence  
17 or aid code that will result in the recipient's or  
18 beneficiary's disenrollment from the managed care  
19 health or dental plan in which they are currently  
20 enrolled, a written notice shall be given to the recipient  
21 or beneficiary.

22 (B) This paragraph shall become operative and the  
23 department shall commence sending the notices  
24 required under this paragraph on or before the expiration  
25 of 12 months after the effective date of this section.

26 (o) This section shall be implemented in a manner  
27 consistent with any federal waiver required to be  
28 obtained by the department in order to implement this  
29 section.

30 ~~Professions Code is amended to read:~~

31 ~~2052. (a) Any person who practices or attempts to~~  
32 ~~practice, or who advertises or holds himself or herself out~~  
33 ~~as practicing, any system or mode of treating the sick or~~  
34 ~~afflicted in this state, or who diagnoses, treats, operates~~  
35 ~~for, or prescribes for any ailment, blemish, deformity,~~  
36 ~~disease, disfigurement, disorder, injury, or other physical~~  
37 ~~or mental condition of any person, or who makes a~~  
38 ~~decision regarding the medical necessity or~~  
39 ~~appropriateness of any diagnosis, treatment, operation, or~~  
40 ~~prescription for a particular patient, without having at~~

~~the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter, or without being authorized to perform such act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a misdemeanor.~~

~~(b) Any decision or recommendation regarding the medical necessity or appropriateness of any diagnosis, treatment, operation, or prescription for a particular patient constitutes the practice of medicine, as defined in subdivision (a), and the person making the decision or recommendation is subject to the requirements of this chapter.~~

~~(c) Any remedy provided pursuant to this section shall not preclude any other remedy provided by law.~~

~~SEC. 1.5. Section 2052.2 is added to the Business and Professions Code, to read:~~

~~2052.2. (a) Nothing in Section 2052 shall be construed as limiting the practice of any person licensed, certified, or registered under any other provision of law relating to the healing arts when that person is engaged in his or her authorized and licensed practice, as provided by Section 2061.~~

~~(b) Nothing in Section 2052 shall preclude any action taken pursuant to Section 1370.4 of the Health and Safety Code or Section 10145.3 of the Insurance Code, the Friedman-Knowles Experimental Treatment Act of 1996.~~

~~(c) Nothing in Section 2052 shall apply to any claim coverage decision made under an automobile or homeowners' insurance policy.~~

~~(d) Nothing in Section 2052 shall be construed as limiting the exercise of any treatment by prayer, nor interfere in any way with the practice of religion, as provided by Section 2063.~~

~~(e) Nothing in Section 2052 shall cause a health care service plan to be defined as a health care provider under any provision of law. This section does not abrogate or limit any theory of liability otherwise available at law.~~

~~SEC. 2. Section 1368.07 is added to the Health and Safety Code, to read:~~

1     ~~1368.07. (a) Any person who, pursuant to his or her~~  
2 ~~employment with the plan, or their contractual~~  
3 ~~arrangement with the plan, makes a decision or~~  
4 ~~recommendation regarding the medical necessity or~~  
5 ~~appropriateness of any diagnosis, treatment, operation, or~~  
6 ~~prescription for a particular patient, is engaging in the~~  
7 ~~practice of medicine, as defined in subdivision (a) of~~  
8 ~~Section 2052 of the Business and Professions Code, and~~  
9 ~~shall comply with all requirements in Chapter 5~~  
10 ~~(commencing with Section 2000) of Division 2 of the~~  
11 ~~Business and Professions Code.~~

12     ~~(b) Any remedy provided pursuant to this section shall~~  
13 ~~not preclude any other remedy provided by law.~~

14     ~~SEC. 3. Section 10140.7 is added to the Insurance~~  
15 ~~Code, to read:~~

16     ~~10140.7. (a) Any person who, pursuant to his or her~~  
17 ~~employment with an insurer, or his or her contractual~~  
18 ~~arrangement with an insurer, makes a decision or~~  
19 ~~recommendation regarding the medical necessity or~~  
20 ~~appropriateness of any diagnosis, treatment, operation, or~~  
21 ~~prescription for a particular patient, is engaging in the~~  
22 ~~practice of medicine, as defined in subdivision (a) of~~  
23 ~~Section 2052 of the Business and Professions Code, and~~  
24 ~~shall comply with all requirements in Chapter 5~~  
25 ~~(commencing with Section 2000) of Division 2 of the~~  
26 ~~Business and Professions Code.~~

27     ~~(b) Any remedy provided pursuant to this section shall~~  
28 ~~not preclude any other remedy provided by law.~~

29     ~~SEC. 4. No reimbursement is required by this act~~  
30 ~~pursuant to Section 6 of Article XIII B of the California~~  
31 ~~Constitution because the only costs that may be incurred~~  
32 ~~by a local agency or school district will be incurred~~  
33 ~~because this act creates a new crime or infraction,~~  
34 ~~eliminates a crime or infraction, or changes the penalty~~  
35 ~~for a crime or infraction, within the meaning of Section~~  
36 ~~17556 of the Government Code, or changes the definition~~  
37 ~~of a crime within the meaning of Section 6 of Article~~  
38 ~~XIII B of the California Constitution.~~

39     ~~Notwithstanding Section 17580 of the Government~~  
40 ~~Code, unless otherwise specified, the provisions of this act~~

- 1 ~~shall become operative on the same date that the act~~
- 2 ~~takes effect pursuant to the California Constitution.~~

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